

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

Velvet Caviar Group, Inc.,

Plaintiff,

$$V.$$

Cases A La Mode, Inc.,

Defendant.

### **THE PARTIES**

3. Plaintiff, Velvet Caviar, is a corporation organized and existing under the laws of the State of New York.

4. Upon information and belief, Defendant, Cases-A-La-Mode is a corporation organized and existing under the laws of the State of New York, with a principal place of business at 72 Hicks Lane, Great Neck, NY 11024.

### **JURISDICTION AND VENUE**

5. This action arises under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, and the copyright laws of the United States, 17 U.S.C. § 101 *et seq.*, including under 17 U.S.C. §§ 106, 501, and 512(f), based upon an actual case and controversy between the parties and an intentional material misrepresentation by Cases-A-La-Mode with respect to copyright infringement. Both the actual case or controversy between the parties and the material misrepresentation are evidenced by the copyright infringement assertions made in Cases-A-La-Mode's DMCA Takedown Notice that it sent to Shopify.com on April 13, 2018. This Court has original jurisdiction over this claim pursuant to 28 U.S.C. § 1331 and/or 1338(a).

6. This Court has personal jurisdiction over Cases-A-La-Mode pursuant to New York CPLR §§ 301 and 302. Upon information and belief, Cases-A-La-Mode resides in Nassau County and transacts business within New York.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 1400(a).

### **FACTUAL BACKGROUND**

8. Velvet Caviar's business is directed to designing and selling stylish cell phone cases and other accessories. As a business, it strives to deliver a wide range of attractive, unique, and protective phone cases. It prides itself on offering many one-of-a-kind designs

crafted by its own in-house artists and owns a portfolio of nearly 40 copyright registrations to protect some of its best-selling original designs.



9. Velvet Caviar sells its cell phone cases and other accessories in United States commerce through its website on the Shopify.com platform ([www.velvetcaviar.com](http://www.velvetcaviar.com)), as well as through other e-commerce sites (e.g., Amazon.com) and distribution channels (e.g., retail stores).

10. Upon information and belief, similar to Velvet Caviar, Cases-A-La-Mode's business is also directed to selling stylish cell phone cases and other accessories. Upon information and belief, Cases-A-La-Mode sells its cell phone cases and other accessories in United States commerce through its website on the Shopify.com platform ([www.casesalamode.com](http://www.casesalamode.com)), as well as through other e-commerce sites (e.g., Amazon.com) and distribution channels (e.g., retail stores).


**Cases-A-La-Mode Has a History of Copying Velvet Caviar's Product Designs**

11. Upon information and belief, many of the designs offered for sale and sold by Cases-A-La-Mode have habitually been derived from designs first created and published by Velvet Caviar.



12. For example, Velvet Caviar first launched its Black Marble Chrome Rose design on or around February 15, 2017, which is registered with the United States Copyright Office as Copyright Registration No. Vau001270601, and Cases-A-La-Mode launched a similar design a few months later on or around April 18, 2017:

Velvet Caviar's Black Marble Chrome Rose Design	Cases-A-La-Mode's Black and Rose Chrome Marble case
 <p><b>Located at:</b>  <a href="https://velvetcaviar.com/products/black-marble-rose-gold-chrome-iphone-case">https://velvetcaviar.com/products/black-marble-rose-gold-chrome-iphone-case</a>  <a href="https://velvetcaviar.com/collections/samsung-galaxy-cases/products/black-marble-rose-gold-chrome-samsung-galaxy-case">https://velvetcaviar.com/collections/samsung-galaxy-cases/products/black-marble-rose-gold-chrome-samsung-galaxy-case</a></p> <p><b>Launched February 15, 2017.</b> See <a href="https://www.instagram.com/p/BQjEZQXAk5/?taken-by=velvetcaviar">https://www.instagram.com/p/BQjEZQXAk5/?taken-by=velvetcaviar</a></p>	 <p><b>Located at:</b>  <a href="https://www.casesalamode.com/products/black-chrome?ref=yotpo_93">https://www.casesalamode.com/products/black-chrome?ref=yotpo_93</a>  <a href="https://www.casesalamode.com/collections/marble-phone-cases/products/blackchrome?variant=37679036236">https://www.casesalamode.com/collections/marble-phone-cases/products/blackchrome?variant=37679036236</a></p> <p><b>Launched April 18, 2017.</b> See <a href="https://www.facebook.com/casesalamode/photos/a.265284966963956.1073741827.265253233633796/815349378624176/?type=3">https://www.facebook.com/casesalamode/photos/a.265284966963956.1073741827.265253233633796/815349378624176/?type=3</a></p>

13. As another example, Velvet Caviar first published its White Marble Rose Gold Chrome design in October 2016, which design is registered with the United States Copyright Office as Copyright Registration No. VA0002046540. Velvet Caviar first launched this product on or around February 15, 2017. Cases-A-La-Mode launched a similar design a few months later on or around December 25, 2017:

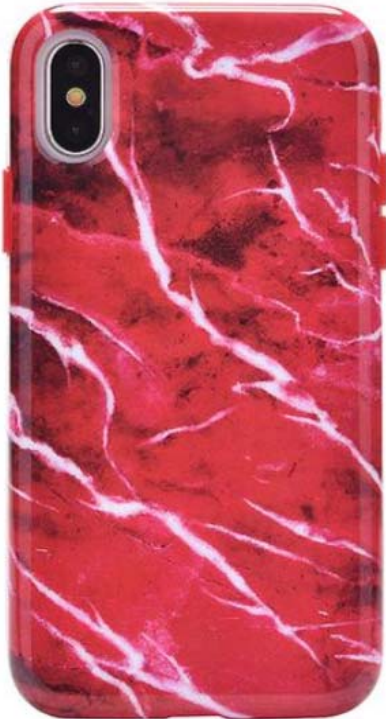

Velvet Caviar's White Marble Rose Gold Chrome Design	Cases-A-La-Mode's Classic White Marble with Rose Gold case
 <p><b>Previously located at:</b>  <a href="https://velvetcaviar.com/products/white-marble-rose-gold-chrome-iphone-case">https://velvetcaviar.com/products/white-marble-rose-gold-chrome-iphone-case</a>  <a href="https://velvetcaviar.com/products/white-marble-rose-gold-chrome-samsung-galaxy-case">https://velvetcaviar.com/products/white-marble-rose-gold-chrome-samsung-galaxy-case</a></p> <p><b>Launched February 15, 2017.</b> See <a href="https://www.instagram.com/p/BQjEZQXAk5/?taken-by=velvetcaviar">https://www.instagram.com/p/BQjEZQXAk5/?taken-by=velvetcaviar</a></p>	 <p><b>Located at:</b>  <a href="https://www.casesalamode.com/collections/marble-phone-cases/products/classic-white-marble-with-rose-gold-case">https://www.casesalamode.com/collections/marble-phone-cases/products/classic-white-marble-with-rose-gold-case</a></p> <p><b>Launched December 25, 2017.</b> See <a href="https://www.facebook.com/casesalamode/photos/a.265286550297131.1073741828.265253233633796/944321855726927/?type=3">https://www.facebook.com/casesalamode/photos/a.265286550297131.1073741828.265253233633796/944321855726927/?type=3</a></p>

14. As yet another example, Velvet Caviar first launched its Purple Waves design (also known as the Iridescent Waves design) on or around May 22, 2016, which design is registered with the United States Copyright Office as Copyright Registration No. VAu001251902. Cases-A-La-Mode later launched a similar design on or around January 17, 2018:



Velvet Caviar's Purple Waves/Iridescent Waves Design	Cases-A-La-Mode's Violet Haze Marble case
 <p><b>Located at:</b>  <a href="https://velvetcaviar.com/products/purple-waves">https://velvetcaviar.com/products/purple-waves</a>  <a href="https://velvetcaviar.com/collections/samsung-galaxy-s8-cases/products/iridescent-waves-samsung-s7-case?variant=38744716995">https://velvetcaviar.com/collections/samsung-galaxy-s8-cases/products/iridescent-waves-samsung-s7-case?variant=38744716995</a></p> <p><b>Launched May 22, 2016.</b> See  <a href="https://www.instagram.com/p/BFt3piTLfXM/?hl=en&amp;taken-by=velvetcaviar">https://www.instagram.com/p/BFt3piTLfXM/?hl=en&amp;taken-by=velvetcaviar</a></p>	 <p><b>Located at:</b>  <a href="https://www.casesalamode.com/collections/marble-phone-cases/products/violet-haze-marble-case">https://www.casesalamode.com/collections/marble-phone-cases/products/violet-haze-marble-case</a></p> <p><b>Launched January 17, 2018.</b> See  <a href="https://www.instagram.com/p/BeEONi_152F/?hl=en&amp;taken-by=casesalamode">https://www.instagram.com/p/BeEONi_152F/?hl=en&amp;taken-by=casesalamode</a></p>



15. As yet another example, Velvet Caviar first launched its Red Marble design on or around August 2, 2017, which design is registered with the United States Copyright Office as Copyright Registration No. VAu001283757, and Cases-A-La-Mode launched a similar design a few months later on or around October 12, 2017:

Velvet Caviar's Red Marble Design	Cases-A-La-Mode's Red Galaxy Marble case
 <p><b>Located at:</b>  <a href="https://velvetcaviar.com/collections/marble-phone-cases/products/red-velvet-marble-iphone-case">https://velvetcaviar.com/collections/marble-phone-cases/products/red-velvet-marble-iphone-case</a>  <a href="https://velvetcaviar.com/collections/samsung-galaxy-cases/products/red-velvet-marble-samsung-galaxy-case">https://velvetcaviar.com/collections/samsung-galaxy-cases/products/red-velvet-marble-samsung-galaxy-case</a></p> <p><b>Launched August 2, 2017.</b> See <a href="https://www.facebook.com/VelvetCaviar/posts/676296205908575">https://www.facebook.com/VelvetCaviar/posts/676296205908575</a></p>	 <p><b>Located at:</b>  <a href="https://www.casesalamode.com/collections/marble-phone-cases/products/red-galaxy-marble-case">https://www.casesalamode.com/collections/marble-phone-cases/products/red-galaxy-marble-case</a></p> <p><b>Launched October 12, 2017.</b> See <a href="https://www.facebook.com/casesalamode/photos/a.265286550297131.1073741828.265253233633796/907647916060988/?type=3">https://www.facebook.com/casesalamode/photos/a.265286550297131.1073741828.265253233633796/907647916060988/?type=3</a></p>

16. As yet a further example, Velvet Caviar first launched its Floral Rose Gold Chrome design on or around March 8, 2017, which design is registered with the United States Copyright Office as Copyright Registration No. VAu001270597, and Cases-A-La-Mode launched a similar design about a year later on or around March 30, 2018:



Velvet Caviar's Floral Rose Gold Chrome Design	Cases-A-La-Mode's Rose Gold Floral Chrome case
 <p><b>Located at:</b>  <a href="https://velvetcaviar.com/collections/floral-phone-cases/products/chrome-rose-gold-floral-iphone">https://velvetcaviar.com/collections/floral-phone-cases/products/chrome-rose-gold-floral-iphone</a>  <a href="https://velvetcaviar.com/collections/samsung-galaxy-cases/products/floral-rose-gold-chrome-iphone-case">https://velvetcaviar.com/collections/samsung-galaxy-cases/products/floral-rose-gold-chrome-iphone-case</a></p> <p><b>Launched March 8, 2017.</b> See  <a href="https://www.facebook.com/VelvetCaviar/posts/610517202486476">https://www.facebook.com/VelvetCaviar/posts/610517202486476</a></p>	 <p><b>Located at:</b>  <a href="https://www.casesalamode.com/collections/floral-cases/products/rose-gold-floral-chrome-case">https://www.casesalamode.com/collections/floral-cases/products/rose-gold-floral-chrome-case</a>  <a href="https://www.casesalamode.com/collections/floral-cases/products/rose-gold-floral-chrome-samsung-galaxy-case">https://www.casesalamode.com/collections/floral-cases/products/rose-gold-floral-chrome-samsung-galaxy-case</a></p> <p><b>Launched March 30, 2018.</b> See  <a href="https://www.facebook.com/casesalamode/photo/s/a.265286550297131.1073741828.265253233633796/994762394016206/?type=3">https://www.facebook.com/casesalamode/photo/s/a.265286550297131.1073741828.265253233633796/994762394016206/?type=3</a></p>





17. Still further, Velvet Caviar first published its Opal Flakes design on or around November 15, 2017, and Cases-A-La-Mode launched a similar design a few months later on or around April 2, 2018:

Velvet Caviar's Opal Flakes Design	Cases-A-La-Mode's Holo Flakes Dual Layer case
 <p><b>Previously located at:</b>  <a href="https://velvetcaviar.com/products/opal-flakes-dual-iphone-case">https://velvetcaviar.com/products/opal-flakes-dual-iphone-case</a></p> <p><b>Launched November 15, 2017.</b> See  <a href="https://www.facebook.com/VelvetCaviar/videos/716072775264251/">https://www.facebook.com/VelvetCaviar/videos/716072775264251/</a></p>	 <p><b>Located at:</b>  <a href="https://www.casesalamode.com/collections/holographic-phone-cases/products/holo-flakes-case">https://www.casesalamode.com/collections/holographic-phone-cases/products/holo-flakes-case</a></p> <p><b>Launched April 2, 2018.</b> See  <a href="https://www.instagram.com/p/BhFFsndFNvn/?hl=en&amp;taken-by=casesalamode">https://www.instagram.com/p/BhFFsndFNvn/?hl=en&amp;taken-by=casesalamode</a></p>

18. Still further, Velvet Caviar first launched its Blue Lily Chrome design on or around September 6, 2017, which design is registered with the United States Copyright Office as Copyright Registration No. VAu001283755, and Cases-A-La-Mode launched a similar design a few months later on April 16, 2018:

Velvet Caviar's Blue Lily Chrome Design	Cases-A-La-Mode's Blue Floral Chrome Marble case
 <p>The image shows a phone case with a white background and a subtle chrome-like texture. It features large, vibrant blue lily flowers with green leaves and gold-colored outlines. The design is dense and covers the entire surface of the case.</p>	 <p>The image shows a phone case with a white background and a chrome-like texture. It features blue lily flowers with green leaves. The design is similar to the one on the left but appears slightly different in the arrangement of the flowers and the overall aesthetic.</p>
<p><b>Located at:</b>  <a href="https://velvetcaviar.com/collections/floral-phone-cases/products/blue-lily-chrome-floral-iphone-case">https://velvetcaviar.com/collections/floral-phone-cases/products/blue-lily-chrome-floral-iphone-case</a>  <a href="https://velvetcaviar.com/collections/samsung-galaxy-cases/products/blue-lily-chrome-floral-samsung-galaxy-case">https://velvetcaviar.com/collections/samsung-galaxy-cases/products/blue-lily-chrome-floral-samsung-galaxy-case</a></p> <p><b>Launched September 6, 2017.</b> See <a href="https://www.facebook.com/VelvetCaviar/videos/688667558004773/">https://www.facebook.com/VelvetCaviar/videos/688667558004773/</a></p>	<p><b>Located at:</b>  <a href="https://www.casesalamode.com/collections/floral-cases/products/blue-floral-chrome-marble-case">https://www.casesalamode.com/collections/floral-cases/products/blue-floral-chrome-marble-case</a></p> <p><b>Launched April 16, 2018.</b> See <a href="https://www.facebook.com/casesalamode/photos/a.265286550297131.1073741828.265253233633796/1003640149795097/?type=3">https://www.facebook.com/casesalamode/photos/a.265286550297131.1073741828.265253233633796/1003640149795097/?type=3</a></p>

19. Still further, Velvet Caviar first published its Rose Water design on or around November 8, 2016, which design is registered with the United States Copyright Office as Copyright Registration No. V Au001270603, and Cases-A-La-Mode launched a similar design several months later on or around April 15, 2017:

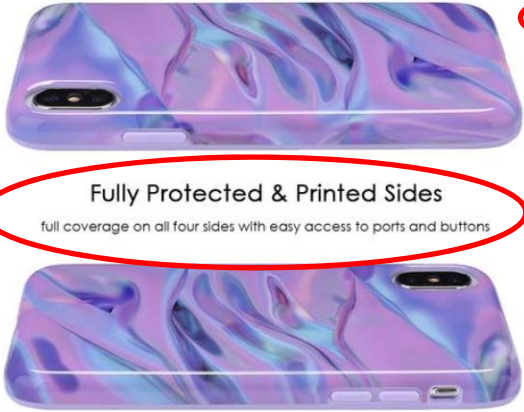




Velvet Caviar's Rose Water Design	Cases-A-La-Mode's Rose Pink Marble case
	
<p><b>Located at:</b>  <a href="https://velvetcaviar.com/collections/marble-phone-cases/products/rose-water-iphone-case">https://velvetcaviar.com/collections/marble-phone-cases/products/rose-water-iphone-case</a>  <a href="https://velvetcaviar.com/collections/samsung-galaxy-s8-cases/products/rose-water-marble-samsung-galaxy-case?variant=38740950531">https://velvetcaviar.com/collections/samsung-galaxy-s8-cases/products/rose-water-marble-samsung-galaxy-case?variant=38740950531</a></p> <p><b>Launched November 8, 2016.</b> See  <a href="https://www.facebook.com/VelvetCaviar/photos/a.234254510112749.1073741829.230923473779186/564377393767124/?type=3">https://www.facebook.com/VelvetCaviar/photos/a.234254510112749.1073741829.230923473779186/564377393767124/?type=3</a></p>	<p><b>Located at:</b>  <a href="https://www.casesalamode.com/collections/marble-phone-cases/products/rosepinkmarble">https://www.casesalamode.com/collections/marble-phone-cases/products/rosepinkmarble</a>  <a href="https://www.casesalamode.com/collections/marble-phone-cases/products/rose-pink-marble-samsung-galaxy-case">https://www.casesalamode.com/collections/marble-phone-cases/products/rose-pink-marble-samsung-galaxy-case</a></p> <p><b>Launched April 15, 2017.</b> See  <a href="https://www.facebook.com/casesalamode/photos/a.265284966963956.1073741827.265253233633796/813697025456078/?type=3">https://www.facebook.com/casesalamode/photos/a.265284966963956.1073741827.265253233633796/813697025456078/?type=3</a></p>

20. The above examples illustrate a pattern of Cases-A-La-Mode capitalizing off of Velvet Caviar's original designs by monitoring Velvet Caviar's most successful designs and copying those designs with minor alterations to launch very similar designs of its own.

21. Along these same lines, Cases-A-La-Mode has adopted a trademark that is very similar to one launched earlier by Velvet Caviar. Specifically, Velvet Caviar first used its mark PRETTY YET PROTECTIVE on May 31, 2016, and registered it with the U.S. Patent and Trademark Office as Registration No. 5,160,788. Cases-A-La-Mode started using a similar trademark, GLAMOROUS AND PROTECTIVE, in an identical location on the home page of its website starting sometime in 2018.

<b>Velvet Caviar's website</b> <a href="http://www.velvetcaviar.com">www.velvetcaviar.com</a>	<b>Cases-A-La-Mode's website</b> <a href="http://www.casesalamode.com">www.casesalamode.com</a>
<p><b>PRETTY YET PROTECTIVE™</b></p> <p>Pretty yet Protective™ isn't just our slogan, but our mission. Since day one, we've strived to deliver the most attractive and unique phone cases without sacrificing protection. We've set our products to meet strict protection requirement so that every user can enjoy the peace of mind knowing their phone is safe inside a Velvet Caviar case. As unique as we each are, we're also committed to continuously expand our collections to accommodate the preferences of anyone looking to protect their phone with a one of a kind fashion accessory.</p>	<p><b>Glamorous and Protective™</b></p> <p>CASES A LA MODE™ was created to keep your phone fashionably protected from all angles.</p> <p>Designed in New York, each phone case was made with the intent of securing your device from accidental drops.</p> <p>Slim fit and drop tested, our glamorous and protective phone cases will get you addicted!</p>

22. Cases-A-La-Mode has also directly copied text and other elements of Velvet Caviar's website onto its own website. For example, two instances of such copying with respect to Velvet Caviar's Purple Waves product are illustrated below:

<b>Velvet Caviar's website</b> <a href="https://velvetcaviar.com/products/purple-waves">https://velvetcaviar.com/products/purple-waves</a>	<b>Cases-A-La-Mode's website</b> <a href="https://www.casesalamode.com/collections/iphone-x/products/violet-haze-marble-case">https://www.casesalamode.com/collections/iphone-x/products/violet-haze-marble-case</a>
 <p><b>Fully Protected &amp; Printed Sides</b> full coverage on all four sides with easy access to ports and buttons</p>	<p><b>Fully Protected &amp; Printed Sides</b> full coverage on all four side with easy access to ports and buttons</p>  <p>SLIM DESIGN</p> <p>LIGHTNING CONNECTOR</p> <p>OPENING FOR BUILT IN SPEAKER</p> <p>EARPHONE HOLE</p>
<p>Protective Purple Waves print <u>marble phone case</u> with a gloss finish.</p> <p>Need this for a Samsung Galaxy? <a href="#">Click Here.</a></p> <p> <b>Full Protection:</b> Coverage on all sides &amp; buttons, a front raised lip for screen protection, and a shock absorbing interior for drop safety.</p> <p> <b>High Quality:</b> Made from the best TPU &amp; PC materials making a firm yet flexible case for your phone with <u>wireless charging</u> compatability.</p> <p> <b>Custom Design:</b> One of a kind hand drawn design crafted by our artists in New York</p> <p><b>Have a question?</b> Please <a href="#">Contact Us</a> and we'll get back to you within 24 hours.</p>	<p>Protective new Violet Haze <u>marble case</u> print with a glossy easy to grip finish.</p> <ul style="list-style-type: none"> <li>• Made with the highest quality of TPU material, this phone case protects not only the back of your phone but wraps all around the sides to cover the edges without giving extra bulk to your device.</li> <li>• Includes a front raised lip to protect your screen</li> <li>• Designed in NYC, © 2018 Cases A La Mode Inc. All Rights Reserved.</li> </ul> <p><b>Have a question?</b> Please <a href="#">contact us</a> and we'll get back to you within 24 hours</p>

23. The above examples are meant to be representative of Cases-A-La-Mode's general practice of copying from and mimicking Velvet Caviar, and are not an exhaustive list of Cases-A-La-Mode's habitual copying of Velvet Caviar's design and website, among other things.



**Cases-A-La-Mode's DMCA Takedown Notice**

24. Despite Cases-A-La-Mode's habitual practice of copying Velvet Caviar's designs, Cases-A-La-Mode paradoxically filed a DMCA Takedown Notice with Shopify.com on April 13, 2018 alleging copyright infringement by Velvet Caviar. Cases-A-La-Mode falsely asserted that 11 webpages, listing Velvet Caviar's cell phone case products (the "Accused Products"), infringed on Cases-A-La-Mode's "copyrights" and "copyrighted photos" located at 10 of Cases-A-La-Mode's webpages (the "Asserted Designs").<sup>1</sup> As a result of this DMCA Takedown Notice, and despite Velvet Caviar's immediate responses to the Notice that explained the falsity of the factual allegations made under oath by Cases-A-La-Mode in the Notice, these 11 Velvet Caviar webpages were taken down by Shopify.com, resulting in damages to Velvet Caviar.

25. All of the allegations of infringement in the Notice are knowing material misrepresentations by Cases-A-La-Mode subject to damages, including costs and attorneys' fees, under Section 512(f) of the DMCA.

26. First, the infringement allegations in the Notice are intentional misrepresentations because Cases-A-La-Mode knows that it does not own copyrights or copyright registrations<sup>2</sup> for any of the Asserted Designs (i.e., the designs included in the 10 Cases-A-La-Mode webpages for

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<sup>1</sup> The Asserted Designs consist of the designs used on Cases-A-La-Mode's Pastel Marble, Blue Sky, White Rose Chrome, Black Holo Marble, Holo Flakes, and White Holo cases referenced in the DMCA Takedown Notice. The Accused Products consist of the designs used on Velvet Caviar's Violet Sky, Holo Moonstone Marble, White Marble Rose Gold Chrome, Holo Black Marble, Opal Flakes, and Holo White Marble cases referenced in the DMCA Takedown Notice.

<sup>2</sup> Upon information and belief, Cases-A-La-Mode does not own any copyright registrations relating to the designs asserted in its DMCA Takedown Notice. See [https://cocatalog.loc.gov/cgi-bin/Pwebrecon.cgi?Search\\_Arg=%22cases+a+la+mode%22&Search\\_Code=NALL&PID=XIVt3NCC2c9n97Mht6z\\_kfCmyH6ks&SEQ=20180425022654&CNT=25&HIST=1](https://cocatalog.loc.gov/cgi-bin/Pwebrecon.cgi?Search_Arg=%22cases+a+la+mode%22&Search_Code=NALL&PID=XIVt3NCC2c9n97Mht6z_kfCmyH6ks&SEQ=20180425022654&CNT=25&HIST=1) and [https://cocatalog.loc.gov/cgi-bin/Pwebrecon.cgi?Search\\_Arg=zedner+natalie&Search\\_Code=NALL&PID=GM\\_cyH66lIBjkLJcrCvRgA6h3UOnS&SEQ=20180425022805&CNT=25&HIST=1](https://cocatalog.loc.gov/cgi-bin/Pwebrecon.cgi?Search_Arg=zedner+natalie&Search_Code=NALL&PID=GM_cyH66lIBjkLJcrCvRgA6h3UOnS&SEQ=20180425022805&CNT=25&HIST=1) (listing only 3 copyrights registered to "Cases A La Mode" or "Natalie Zedner," titled Sunset Marble, Amethyst Marble Print, and Blue and Gold Drips).

which Cases-A-La-Mode asserts copyright infringement in the DMCA Takedown Notice), and thus knew that there could be no copyright infringement.

27. At a minimum, Cases-A-La-Mode knows that it does not own a copyright on the asserted Pastel Marble design, which it identified in the Notice as being located at <https://www.casesalamode.com/products/pastel-marble-phone-case> and <https://www.casesalamode.com/products/pastel-marble-samsung-galaxy-case>. Cases-A-La-Mode's Pastel Marble design is very similar to Velvet Caviar's Violet Sky Marble Design, which is used on the phone cases previously located at <https://velvetcaviar.com/products/violet-sky-marble-iphone-case> and <https://velvetcaviar.com/products/violet-sky-marble-samsung-s7-case> prior to being taken down as a result of the Notice.

28. A side-by-side comparison, shows that the designs are very similar:

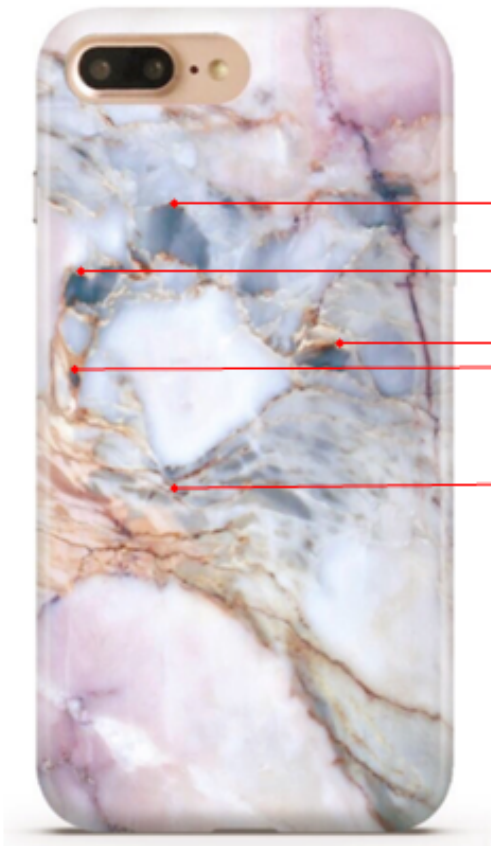
Velvet Caviar's Violet Sky Marble Design	Cases-A-La-Mode's Pastel Marble Design
	

29. *However, Cases-A-La-Mode knows that it does not have a copyright* in its Pastel Marble design, since it was derived from a photo of marble located on Shutterstock.com (posted as a royalty-free stock photo by user janniwet). The following illustration shows how Cases-A-La-Mode altered the photograph (located at <https://www.shutterstock.com/image-photo/white-marble-texture-background-pattern-high-319236197?src=9Irj5Ro2hMpVg1wY-WwuQw-1-27>) to create its case design. The red lines below point to the identical landmarks in the marble photo.

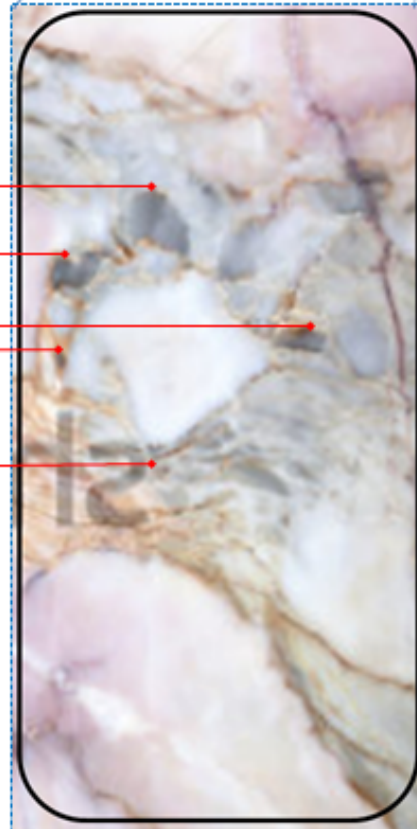


<https://www.shutterstock.com/image-photo/white-marble-texture-background-pattern-high-319236197?src=9Irlj5Ro2hMpVg1wY-WwuQw-1-27>

Mirror  
image



<https://www.casesalamode.com/products/pastel-marble-phone-case>



Annotated Shutterstock Photo

30. As Cases-A-La-Mode's design is an identical copy of a photograph that it obtained from a third-party photographer on Shutterstock, Cases-A-La-Mode cannot own a copyright to this design. Moreover, it knows that it does not own the rights to this design, and thus its DMCA Takedown Notice was a knowing and material misrepresentation subject to damages, including costs and attorneys' fees, under Section 512(f) of the DMCA.

31. Cases-A-La-Mode knows that it does not own copyrights in any of the other Asserted Designs. Velvet Caviar designed all of the patterns in-house and launched all of these designs prior to Cases-A-La-Mode launching a similar product. For example, Velvet Caviar launched its White Marble Rose Gold Chrome design on or about February 15, 2017 (*see* <https://www.instagram.com/p/BQjEZQXAk5/?taken-by=velvetcaviar>) prior to the release of Cases-A-La-Mode's White Rose Chrome design on or around April 17, 2017 (*see* [https://www.instagram.com/p/BS\\_ewbnhTYj/?taken-by=casesalamode](https://www.instagram.com/p/BS_ewbnhTYj/?taken-by=casesalamode)). Likewise, Velvet Caviar launched its Opal Flakes design on or about November 15th, 2017 (*see* <https://www.instagram.com/p/BbhuNzDFba8/?taken-by=velvetcaviar>) prior to the release of Cases-A-La-Mode's Holo Flakes Dual Layer designs on or about April 2, 2018 (*see* <https://www.instagram.com/p/BhFFsndFNvn/?taken-by=casesalamode>).

32. Other of Cases-A-La-Mode's Asserted Designs are clearly not creative works made by Cases-A-La-Mode, as those designs are available from third-party suppliers on, e.g., Alibaba.com. *See, e.g.,* [https://www.alibaba.com/product-detail/Holo-Chrome-Marble-Stone-Image-Case\\_60717911566.html?spm](https://www.alibaba.com/product-detail/Holo-Chrome-Marble-Stone-Image-Case_60717911566.html?spm) (identical to Cases-A-La-Mode's Black Holo and White Holo designs).



33. However, even if Cases-A-La-Mode did own copyrights to the other designs (it doesn't), Cases-A-La-Mode knows that those other designs are not substantially similar to



Velvet Caviar's designs, as required for copyright infringement. While they share common concepts, a side-by-side comparison shows the differences in the expression of these ideas:

Velvet Caviar's Designs	Cases-A-La-Mode's Cases
 <p data-bbox="326 856 662 926"><b>Velvet Caviar's Holo Moonstone Marble</b></p> <p data-bbox="188 938 714 1119">Previously located at:  <a href="https://velvetcaviar.com/products/holo-moonstone-marble-iphone-case">https://velvetcaviar.com/products/holo-moonstone-marble-iphone-case</a>  <a href="https://velvetcaviar.com/products/holo-moonstone-marble-samsung-galaxy-case">https://velvetcaviar.com/products/holo-moonstone-marble-samsung-galaxy-case</a> </p>	 <p data-bbox="998 856 1268 926"><b>Cases-A-La-Mode's Blue Sky</b></p> <p data-bbox="828 938 1430 1050">Located at:  <a href="https://www.casesalamode.com/products/bluesky">https://www.casesalamode.com/products/bluesky</a> </p>
 <p data-bbox="264 1610 725 1680"><b>Velvet Caviar's White Marble Rose Gold Chrome</b></p> <p data-bbox="188 1692 800 1873">Previously located at:  <a href="https://velvetcaviar.com/products/white-marble-rose-gold-chrome-iphone-case">https://velvetcaviar.com/products/white-marble-rose-gold-chrome-iphone-case</a>  <a href="https://velvetcaviar.com/products/white-marble-rose-gold-chrome-samsung-galaxy-case">https://velvetcaviar.com/products/white-marble-rose-gold-chrome-samsung-galaxy-case</a> </p>	 <p data-bbox="995 1610 1271 1680"><b>Cases-A-La-Mode's White Rose Chrome</b></p> <p data-bbox="828 1692 1440 1873">Located at:  <a href="https://www.casesalamode.com/products/white-rose-chrome-phone-case">https://www.casesalamode.com/products/white-rose-chrome-phone-case</a>  <a href="https://www.casesalamode.com/products/white-and-rose-chrome-samsung-galaxy-marble-case">https://www.casesalamode.com/products/white-and-rose-chrome-samsung-galaxy-marble-case</a> </p>

Velvet Caviar's Designs	Cases-A-La-Mode's Cases
 <p data-bbox="363 827 626 894"><b>Velvet Caviar's Holo Black Marble</b></p> <p data-bbox="188 909 724 1073">Previously located at:  <a href="https://velvetcaviar.com/products/holo-black-marble-iphone-case">https://velvetcaviar.com/products/holo-black-marble-iphone-case</a>  <a href="https://velvetcaviar.com/products/holo-black-marble-samsung-galaxy-case">https://velvetcaviar.com/products/holo-black-marble-samsung-galaxy-case</a> </p>	 <p data-bbox="1000 827 1273 894"><b>Cases-A-La-Mode's Black Holo Marble</b></p> <p data-bbox="829 909 1430 1045">Located at:  <a href="https://www.casesalamode.com/products/blackholo">https://www.casesalamode.com/products/blackholo</a>  <a href="https://www.casesalamode.com/products/black-holo-marble-samsung-galaxy-case">https://www.casesalamode.com/products/black-holo-marble-samsung-galaxy-case</a> </p>
 <p data-bbox="388 1654 597 1730"><b>Velvet Caviar's Opal Flakes</b></p> <p data-bbox="188 1745 781 1843">Previously located at:  <a href="https://velvetcaviar.com/products/opal-flakes-dual-iphone-case">https://velvetcaviar.com/products/opal-flakes-dual-iphone-case</a> </p>	 <p data-bbox="1000 1654 1273 1722"><b>Cases-A-La-Mode's Holo Flakes</b></p> <p data-bbox="829 1736 1430 1835">Located at:  <a href="https://www.casesalamode.com/products/holo-flakes-case">https://www.casesalamode.com/products/holo-flakes-case</a> </p>

Velvet Caviar's Designs	Cases-A-La-Mode's Cases
 <p data-bbox="358 793 630 863"><b>Velvet Caviar's Holo White Marble</b></p> <p data-bbox="188 873 789 1073">Previously located at:  <a href="https://velvetcaviar.com/collections/marble-phone-cases/products/holo-white-marble-iphone-case">https://velvetcaviar.com/collections/marble-phone-cases/products/holo-white-marble-iphone-case</a>  <a href="https://velvetcaviar.com/collections/samsung-galaxy-cases/products/holo-white-marble-iphone-case-1">https://velvetcaviar.com/collections/samsung-galaxy-cases/products/holo-white-marble-iphone-case-1</a></p>	 <p data-bbox="997 793 1268 863"><b>Cases-A-La-Mode's White Holo Design</b></p> <p data-bbox="831 873 1432 1073">Located at:  <a href="https://www.casesalamode.com/collections/marble-phone-cases/products/whiteholo">https://www.casesalamode.com/collections/marble-phone-cases/products/whiteholo</a>  <a href="https://www.casesalamode.com/collections/marble-phone-cases/products/white-holo-marble-samsung-galaxy-case">https://www.casesalamode.com/collections/marble-phone-cases/products/white-holo-marble-samsung-galaxy-case</a></p>

34. Thus, the alleged copyright infringement in Cases-A-La-Mode's DMCA Takedown Notice is false at least because: (i) Cases-A-La-Mode clearly does not have rights to at least one of the designs it is asserting—the Pastel Marble design—because it is a near-identical copy of a photograph posted by a third party on Shutterstock.com and, (ii) even if Cases-A-La-Mode did have copyrights to the other designs asserted in the DMCA Takedown Notice (which it doesn't), none of the other designs are infringing because they are not substantially similar.

35. Upon information and belief, Cases-A-La-Mode filed the DMCA Takedown Notice with intentionally false infringement allegations in order to inflict financial harm against its competitor Velvet Caviar by causing Shopify.com to take down six of Velvet Caviar's best-selling products.

36. In addition to knowing that its allegations of infringement generally were false, upon information and belief, Cases-A-La-Mode also intentionally made the following specific false statements in its Notice:

- a. “a seller on Shopify’s platform with the shop name ‘velvetcaviar’ (<http://velvetcaviar.com>), is stealing our intellectual property from (<http://casesalamode.com>) and using the artworks to make and sell *counterfeit* phone cases on their website through Shopify” (emphasis added);
- b. “VELVETCAVIAR is also unlawfully *using our copyrighted photos*” (emphasis added); and
- c. “[w]e *own* all the copyrights listed below and have no problem taking action” (emphasis added).

37. As explained above, since Velvet Caviar does not infringe any of the Asserted Designs, and Cases-A-La-Mode knew that it had no basis for asserting copyright infringement (or trademark infringement), Cases-A-La-Mode knew that its allegations that Velvet Caviar was selling “counterfeit” products or that Velvet Caviar was using its “copyrighted photos” were false. Upon information and belief, Cases-A-La-Mode also knew that its allegations that it “owned” any copyrights in the Asserted Designs was false.

38. In order to attempt to mitigate the damage to Velvet Caviar by Cases-A-La-Mode’s wrongful DMCA Takedown Notice, Velvet Caviar sent several responses to Shopify.com explaining that Cases-A-La-Mode did not have any copyrights and that, even if it did, there was no copyright infringement. These responses are attached as Exhibits 2 and 3 to the Complaint. Velvet Caviar urged Shopify.com to immediately replace or reactivate the pages

that were taken down as a result of Cases-A-La-Mode's DMCA Takedown Notice, and requested that Shopify.com consider suspending and/or terminating Cases-A-La-Mode's account.

39. Upon information and belief, Cases-A-La-Mode received these responses. Cases-A-La-Mode could not have had a subjective good faith belief that Velvet Caviar's designs infringed any copyrights owned by Cases-A-La-Mode when it filed the DMCA Takedown Notice, and certainly could not have had a subjective good faith belief that there was copyright infringement after receiving these responses. Nonetheless, Cases-A-La-Mode did not withdraw its assertion of infringement. As a result, Velvet Caviar's 11 webpages accused in the Notice are still wrongfully taken down as of the date of this Complaint.

40. Upon information and belief, Shopify.com removed the Accused Products from its platform in direct reliance upon one or more of: (i) Cases-A-La-Mode's statements in its DMCA Takedown Notice; and/or (ii) Cases-A-La-Mode's continuation of and failure to withdraw its false assertions and allegations as contained in its original DMCA Takedown Notice.

41. When Shopify.com took down the Accused Products on or about April 16, 2018, the Accused Products could no longer be either (i) advertised by Velvet Caviar on its website; or (ii) purchased by potential customers who knew of the product and intended to purchase it or potential customers who would have visited those products and purchased them.

42. Thus, Cases-A-La-Mode's actions have interfered with the revenue that Velvet Caviar would have received from sales of the Accused Products from its website if not for the takedown. In addition, there has been damage to Velvet Caviar's goodwill as a result of the takedown. Velvet Caviar has also suffered damages in the form of attorneys' fees required to respond to the DMCA Takedown Notice.



**COUNT I**  
**(17 U.S.C. § 512(f) Misrepresentation)**

43. Velvet Caviar repeats and incorporates by reference the allegations set forth in Paragraphs 1–42, inclusive.

44. Velvet Caviar’s Accused Products do not infringe any of the Asserted Designs or any copyright owned by Cases-A-La-Mode.

45. Velvet Caviar’s Accused Products do not infringe any valid copyright rights in Cases-A-La-Mode’s Asserted Designs because, *inter alia*, (i) Cases-A-La-Mode does not own any copyrights in the Asserted Designs; (ii) the designs used on Velvet Caviar’s Accused Products were not copied from Cases-A-La-Mode’s Asserted Designs; and (iii) any aspects of the designs of Velvet Caviar’s Accused Products that are similar to Cases-A-La-Mode’s Asserted Designs are non-protectable ideas.

46. Upon information and belief, Cases-A-La-Mode knew that the factual statements it made to Shopify.com in the DMCA Takedown Notice were materially and factually false.

47. Upon information and belief, Cases-A-La-Mode knew that it did not own any copyrights in the Asserted Designs.

48. Upon information and belief, Cases-A-La-Mode knew that the designs in Velvet Caviar’s Accused Products were similar to Cases-A-La-Mode’s Asserted Designs in idea only, and were not substantially similar in the original expression used by Velvet Caviar.

49. Upon information and belief, Cases-A-La-Mode had actual subjective knowledge that the designs of Velvet Caviar’s Accused Products did not infringe any valid copyright owned by Cases-A-La-Mode on the date Cases-A-La-Mode sent Shopify.com the DMCA Takedown Notice. With this actual subjective knowledge, Defendant acted in bad faith when it sent the

DMCA Takedown Notice, knowingly and materially misrepresenting that it had concluded that the Accused Products were infringing.

50. Upon information and belief, Cases-A-La-Mode had actual subjective knowledge that the Accused Products were not exact copies of Cases-A-La-Mode's Asserted Designs and that Velvet Caviar was not using any third party trademarks in associating with the sales of the Accused Products, and thus Cases-A-La-Mode had actual subjective knowledge that Velvet Caviar was not selling "counterfeit" phone cases on the date that Cases-A-La-Mode sent the DMCA Takedown Notice. With this actual subjective knowledge, Cases-A-La-Mode acted in bad faith when it sent the Notice, knowingly and materially misrepresenting that the Accused Products were counterfeit.

51. Upon information and belief, Cases-A-La-Mode had actual subjective knowledge that Cases-A-La-Mode did not own any "copyrighted photos" on the webpages hosting its Asserted Designs, and thus Cases-A-La-Mode had actual subjective knowledge that Velvet Caviar was not infringing such "copyrighted photos" on the date that Cases-A-La-Mode sent the DMCA Takedown Notice. With this actual subjective knowledge, Cases-A-La-Mode acted in bad faith when it sent the Notice, knowingly and materially misrepresenting that the Accused Products were infringing.

52. Upon information and belief, Cases-A-La-Mode had actual subjective knowledge that Cases-A-La-Mode did not "own" any copyrights in the webpages listed in the DMCA Takedown Notice, thus Cases-A-La-Mode had actual subjective knowledge that Velvet Caviar was not infringing such asserted copyrights on the date that Cases-A-La-Mode sent the DMCA Takedown Notice. With this actual subjective knowledge, Cases-A-La-Mode acted in bad faith

when it sent the Notice, knowingly and materially misrepresenting that the Accused Products were infringing.

53. Cases-A-La-Mode violated 17 U.S.C. § 512(f) by knowingly materially misrepresenting that the Accused Products infringed Cases-A-La-Mode's Asserted Designs.

54. As a direct and proximate result of Cases-A-La-Mode's actions, Velvet Caviar has been injured substantially and irreparably. Such injury includes, but is not limited to, (i) the loss of revenue, which was a direct result of the diminished access of the Velvet Caviar Accused Products by the public and resulting reduction in sales, (ii) the reputational harm stemming from the instantaneous loss of the webpages hosting the Accused Products, and (iii) the financial and personal expenses associated with responding to the claim of infringement.

**COUNT II**  
**(Declaratory Judgment of Non-Infringement)**

55. Velvet Caviar repeats and incorporates by reference the allegations set forth in Paragraphs 1–54, inclusive.

56. Cases-A-La-Mode has created a controversy between Velvet Caviar and Cases-A-La-Mode regarding whether Velvet Caviar's Accused Products infringe the copyrights, if any, in Cases-A-La-Mode's Asserted Designs.

57. Velvet Caviar's Accused Products do not infringe any of the Asserted Designs or any copyright owned by Cases-A-La-Mode. Velvet Caviar is entitled to declaratory judgment that its Accused Products are not infringing, has not infringed, and is not liable for infringing any valid copyright owned by Cases-A-La-Mode relating to the Asserted Designs.

58. As a direct and proximate result of Cases-A-La-Mode's actions, Velvet Caviar has been injured substantially and irreparably. Such injury includes, but is not limited to, (i) the loss of revenue, which was a direct result of the diminished access of the Velvet Caviar Accused

Products by the public and resulting reduction in sales, (ii) the reputational harm stemming from the instantaneous loss of the webpages hosting the Accused Products, and (iii) the financial and personal expenses associated with responding to the claim of infringement.

59. Velvet Caviar is entitled to recover its attorneys' fees and any and all costs associated with pursuing this matter. In the alternative, Velvet Caviar asks for attorneys' fees as damages due to the bad faith action of Defendant in these matters.

**PRAYER FOR RELIEF**

**WHEREFORE**, Velvet Caviar prays for this Court to grant the following relief:

A. Entry of a judgment that Velvet Caviar's Accused Products do not infringe any of the Asserted Designs;

B. Injunctive relief restraining Defendant, its agents, servants, employees, successors and assigns, and all others in concert and privity with Defendant, from bringing any lawsuit or threat against Plaintiff for copyright infringement in connection with the Accused Products, including, but not limited to, their publication, distribution, performance, display, or licensing, via Shopify.com or other public or private portal;

C. Injunctive relief requiring Defendant to rescind Cases-A-La-Mode's DMCA Takedown Notice with Shopify.com;

D. Injunctive relief enjoining Defendant from submitting future DMCA take down notifications regarding the Accused Products or any substantially similar design of Plaintiff to Shopify.com or other public or private portal;

E. Damages pursuant to 17 U.S.C. § 512(f), or other portions of the Copyright Act including Section 505 according to proof or as otherwise allowed by law;

F. Attorneys' fees pursuant to 17 U.S.C. § 512(f), other portions of the Copyright Act including Section 505, on a Private Attorney General basis, or otherwise as allowed by law;

G. Plaintiff's costs and disbursements, pursuant to 17 U.S.C. § 512(f), or other portions of the Copyright Act including Section 505; and

H. Such other and further relief as this Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

In accordance with Rule 38 of the Federal Rules of Civil Procedure, Velvet Caviar respectfully demands a jury trial of all issues triable to a jury in this action.

Dated: April 27, 2018

Respectfully submitted,

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